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**VARIOUS COMMITTEES' ROLES AND RESPONSIBILITIES REGARDING
STUDY OF THE PUBLIC MENTAL HEALTH SYSTEM**

By Susan Byorth Fox, Research Analyst
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This research memorandum was prepared to assist the Mental Health Oversight Advisory Committee, the Department of Public Health and Human Services, the House Joint Resolution No. 35 Mental Health Subcommittee, and the Children, Families, Health, and Human Services Legislative Interim Committee in understanding the respective roles and responsibilities regarding the public mental health care system.

With the cancellation and completion of the mental health managed care contract, the close of the 1999 Legislature, and the passage of Senate Bill No. 534 (Ch. 577, L. 1999) and House Joint Resolution No. 35, numerous Legislative and Executive Branch entities are involved in some capacity of administering, advising, monitoring, and reviewing the public mental health care system. This memorandum is intended to delineate the roles and responsibilities of each entity according to statute. The entities that will be discussed are primarily the Department of Public Health and Human Services (DPHHS), the Mental Health Oversight Advisory Council, the House Joint Resolution No. 35 Mental Health Subcommittee, and the Children, Families, Health, and Human Services Legislative Interim Committee. Also addressed are the Mental Health Ombudsman and the managed care consultant required in Senate Bill No. 534.

Senate Bill No. 534 was requested during the legislative session by the House Joint Appropriation Subcommittee on Human Services when it was apparent that the mental health managed care contract was mired in difficulty. The bill was intended to set guardrails by which the DPHHS would replace the current managed care system. The bill was very managed care oriented as, at that time, it was understood that DPHHS would replace the current managed care system with a different managed care system, perhaps one more regionally based. Exemptions from the insurance code for a mental health managed care system were deleted, and direct internal references tied any mental health managed care system with operation under the health maintenance organization law in Title 33, chapter 31, MCA, or the managed care community network provisions under Title 53, chapter 6, part 7, MCA. Medicaid and mental health care statutes were amended to provide for more flexibility in funding the mental health managed care program from revenue received at the two mental health institutions and to clarify eligibility language.

Section 6 of SB 534, codified at 53-21-701, MCA:

- (1) requires the DPHHS to incrementally develop managed care systems for public mental health services;
- (2) defines the Legislature's understanding of what a managed care system is;
- (3) allows multiple contracts for the administration or delivery of mental health services;
- (4) ties eligibility to the medicaid statutes;
- (5) reiterates the DPHHS's ability to establish amount, scope, and duration of services;
- (6) requires the DPHHS to form the mental health oversight advisory council; and
- (7) requires the DPHHS to formally evaluate contract performance with regard to specific outcome measures.

Section 7 of SB 534, codified at 53-21-702:

- (1) requires the DPHHS to develop a delivery system of mental health managed care and to determine what elements must be included in a system of mental health managed care;
- (2) allows the DPHHS to limit services for nonmedicaid-eligible individuals;
- (3) requires the DPHHS to contract with an independent consulting firm that is knowledgeable and experienced in developing managed mental health care systems and requires the firm to make regular reports to the Legislative Finance Committee and any other appropriate legislative interim committee every 6 months; and

(4) limits the term of any contract to 5 years and allows the DPHHS to implement care-managed fee-for-service reimbursement to provide mental health services as otherwise permitted by law during the transition from a single statewide contract.

The DPHHS was granted new rulemaking authority (codified at 53-21-703, MCA) for eligibility criteria, for amount, scope, and duration of services, and for reimbursement rates, which requires taking into account the availability of funds and the costs, quality, delivery, and availability of services. The statute delineating the Legislative Auditor's responsibility to oversee the managed care covered under Title 53, chapter 6, part 7, for waste, fraud, and abuse was amended. The Governor was required to appoint a mental health managed care ombudsman to represent the interests of consumers of public mental health services (codified at 2-15-210, MCA), and a provision was added allowing inpatient hospital youth psychiatric facilities to participate in the medicaid program for acute care inpatient hospital services (codified at 53-6-170, MCA, and terminates 6/30/2001).

House Joint Resolution No. 35 was also passed by the 1999 Legislature. It was requested by the House Judiciary Standing Committee and assigns the duties of studying further development of and monitoring the transitions in the public mental health care system. The resolution delineates 13 items that the study may include and also directs the Legislative Finance Committee and its staff to work with the Legislative Audit Committee and other appropriate interim committees and their staffs to coordinate the administration of the appropriate functions and expertise for the study. The Legislative Finance Committee was allowed to appoint members of the Legislative Audit Committee and other interim committees as voting members of a subcommittee.

It is on these two pieces of legislation and on existing statute that the following roles and responsibilities are based and delineated for each entity mentioned above.

The DPHHS is the Executive Branch agency, authorized under Title 2, chapter 15, part 22, MCA, that is responsible for administering the public mental health system. Section 53-1-601, MCA, states as a purpose of the DPHHS to "develop and maintain comprehensive services and programs in the field(s) of mental health". The general powers and duties of the DPHHS are found in Title 53, chapter 2, part 2, including the department's duty to "administer and supervise public assistance, including . . . medical

care payments in behalf of recipients of public assistance . . . and other programs necessary to strengthen and preserve families" (53-2-201(1)(a), MCA).

Specific duties regarding mental health services are found partly in the medical assistance and medicaid statutes in Title 53, chapter 6, part 1, MCA, where the DPHHS is allowed (not required) to include mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2, MCA (53-6-101(3)(f), MCA). Medicaid managed care statutes, which were implemented in the mental health managed care system, are found at 53-6-113(8), 53-6-116, and 53-6-117, MCA. Eligibility requirements are found at 53-6-131, MCA, especially subsection (10) that refers to nonmedicaid-eligible persons' eligibility for mental health services.

Statutes governing treatment of the mentally ill are contained in Title 53, chapter 21, which includes considerable detail on the treatment of the seriously mentally ill and on community mental health centers, community-based nursing homes, the Montana Mental Health Nursing Care Center, and Montana State Hospital, along with and a single statute (53-21-506, MCA) on youth treatment that does not allow commitment of an individual under 18 years of age to Montana State Hospital unless an information has been filed in district court pursuant to 41-5-206, MCA (filing of an information in district court regarding a juvenile criminal offense that seeks to transfer the youth to adult court proceedings). Four new sections from Senate Bill No. 534 are codified as part 7 in this chapter.

In addition to their existing statutory responsibilities to provide some level of mental health services in this state, Senate Bill No. 534 directs the DPHHS to "incrementally develop managed care systems for recipients of public mental health services" (53-21-701, MCA). The Legislature included their understanding of a managed care system in subsection (2) to guide the DPHHS in that development. The DPHHS is required to "develop a delivery system of mental health managed care from current providers or other entities that are able to provide administration or delivery of mental health services", and the statute also outlines what elements a system of mental health managed care must include (53-21-702, MCA).

The DPHHS was directed to form the Mental Health Oversight Advisory Council by Senate Bill No. 534 (53-21-701(6), MCA). It was intended to replace previous councils and to be more independent of the DPHHS. This advisory council's membership and geographic representation is outlined in the

statute. The advisory council was allowed to be administered so as to fulfill any federal advisory council requirements in order to obtain federal funds for this program. The DPHHS has appointed the advisory council so as to fulfill the federal requirements for the State Mental Health Planning Council, and the advisory council will review the annual Mental Health Block Grant. The advisory council's duties are:

(1) to provide input to the department in the development and management of any public mental health system (53-21-701(6)(a), MCA). A specific exemption from 2-15-122, MCA, allows the council to not be limited by the definition of "advisory capacity" in 2-15-102, MCA.

(2) to provide a summary of each meeting and a copy of any recommendations made to the department to the Legislative Finance Committee and any other designated appropriate legislative interim committee (53-21-701(6)(d), MCA). The appropriate legislative interim committee is the Children, Families, Health, and Human Services Legislative Interim Committee. The DPHHS has a corresponding responsibility to provide to the same committees the rationale for not accepting or implementing any recommendations of the advisory council.

Adjunct issues are the Mental Health Managed Care Ombudsman and managed care consultant required in Senate Bill No. 534. The Mental Health Managed Care Ombudsman is required to be appointed by the Governor for a term of 4 years and is attached to the Mental Disabilities Board of Visitors for administrative purposes (2-15-210, MCA). The ombudsman is required to represent the interests of consumers of services with the contractor or the DPHHS under the mental health provisions of Title 53, chapters 6 and 21. This position was created to give the consumers a point of contact that is independent of the DPHHS and directly accountable to the Governor. As the title implies, it was anticipated that there would be third-party managed care contractors involved that may require the ombudsman's attention.

The DPHHS is required to "contract with an independent professional consulting firm that is knowledgeable and experienced in developing managed mental health care systems" (53-21-702(3), MCA). The only specific requirement is that the DPHHS has to include, as a part of the contract, regular reports by the consultant to the Legislative Finance Committee and any other appropriate legislative interim committee (the Children, Families, Health, and Human Services Legislative Interim Committee). This provision was included so that the DPHHS would seek information on managed care systems in the transition from the old system and development of a new mental health managed care

system. As the DPHHS has developed a fee-for-service system as of July 1, 1999, the contractor could assist in analysis of the current system and the development of additional elements towards the fulfillment of the managed care system outlined in 53-21-701(1) through (3), MCA, and development of the elements of the system of mental health managed care outlined in 53-21-702(1), MCA.

The House Joint Resolution No. 35 Mental Health Subcommittee is a subcommittee of the Legislative Finance Committee. The Legislative Finance Committee is the administering committee for the Legislative Fiscal Division of the Legislative Branch. The Legislative Branch's primary duty is to set public policy in the form of passing legislation and appropriating funds.

The Legislative Finance Committee appointed four members to the subcommittee: Senator Swysgood, chair, Senator Franklin, and Representatives Taylor and McCann. The Children, Families, Health, and Human Services Subcommittee members appointed were Senators Keenan and Waterman and Representative Soft, and the Legislative Audit Committee member is Representative Barnhart. This Subcommittee is assigned the duties of studying further development of and monitoring the transitions in the public mental health care system. This is in addition to:

(1) the specific authority set forth in 53-6-116, MCA, that requires submittal of proposed managed care and capitated health care systems for medicaid recipients to be submitted to the Legislative Finance Committee who must review the proposed systems at its next regularly scheduled meeting and who shall provide any comments concerning the proposed systems to the DPHHS; and

(2) the general statutory powers and duties of the Legislative Finance Committee to exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1 (5-12-205, MCA) and to investigate and examine the costs and revenue of state government activities and to examine and obtain copies of the records, books, and files of any state agency, including confidential records (5-12-303, MCA).

Senate Bill No. 11 (Ch. 19, L. 1999) restructured legislative interim committees and their duties. The Children, Families, Health, and Human Services Legislative Interim Committee was created to perform the duties of administrative rule review, to conduct interim studies, and to monitor the operation of assigned Executive Branch agencies, in this case the Department of Public Health and Human Services. Any reference to "the appropriate legislative interim committee" in statute or legislation in regard to the DPHHS will be referring to this committee.

In summary, the Legislative Branch has set forth the public policy requirements through statute and budget for the Executive Branch agency to administer. In the interest of representing its constituency, monitoring the costs of state government activities, and fulfilling a resolution of the Legislature, the Legislative Finance Committee has appointed a subcommittee to study the further development and monitor the transitions to a new public mental health care system.

The DPHHS has statutory duties to fulfill in the administering of a public mental health care system. New duties included the appointment of an advisory council that is to represent the various stakeholders in the public mental health care system to guide the DPHHS in the further development of the public mental health care system as required by statute. The DPHHS is also required to use the professional services of a consultant in the development of a managed care system of public mental health.

An ombudsman is required to be appointed by the Governor to serve as a representative of consumer interests with the DPHHS and any contractor providing public mental health care services.

There are certain reporting requirements from the DPHHS and its advisory council back to the Legislative Finance Committee and to the Children, Families, Health, and Human Services Legislative Interim Committee in order that they may fulfill their monitoring duties.

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